

Kings and Nobles in the Later Middle Ages

A Tribute to Charles Ross

Edited by
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An Anachronism with Intent? Henry VII's Council Ordinance of 1491/2¹

M.M. Condon

The Public Record Office class known as warrants for the great seal is an important quarry for the historian of the fifteenth-century council. For the councils of the Yorkists, little survives save bills brought before the council and the chancery warrants; nor, though the format of conciliar *acta* was well established before 1485, can we be certain that registers were regularly kept.² Henry VII's council registers are lost, apart from extracts and precedents copied in the reign of Elizabeth and her successor.³ However, the files of undated chancery warrants of Henry's reign include a worn parchment, signed by the king, but bearing neither date nor direction.⁴ Examination shows it to be a council ordinance; and its reference to Henry's intended journey against his 'aunsiant enemye' the king of France enables it to be dated 1491/2, and places it among the preparations for Henry's one major foreign adventure, the French war, ended by the treaty of Etaples on 3 November 1492 after a campaign of only thirty-three days. The condemnation of the marriage of Anne of Brittany with Charles VIII of France, as well as the oblique reference to the movements of Perkin Warbeck, suggest that it belongs to 1492, and possibly represents a late stage in the preparations which had commenced officially with the summoning of a great council in June 1491.⁵ There is no suggestion that the ordinance was formulated in parliament, but it might have been communicated to the war parliament of 1491-92, which was finally dissolved on 5 March 1492. Certainly it preceded the end of August 1492, since it bears the king's first sign manual rather than his second, which he adopted inconsistently from 18 July and exclusively from 28 August 1492.⁶

The ordinance established a council of regency under Arthur, prince of Wales, to preserve the peace and maintain justice during the king's absence, and it laid down procedures which the council was to follow. The exercise was comparable to the issue of the conciliar ordinances of 1423-36⁷, the terms of which it generally echoed or repeated. In fact, Henry VII and his advisers reworked the ordinance of 1430, which they took from the text on the parliament roll, where it had been given formal sanction and enrolled to be of record.⁸ The historical value of the 1491/2 ordinance is, however, barely diminished by its derivation from an earlier source. The reissue implies that it

was still relevant; and it illuminates contemporary assessments of the membership, function and procedures of the council. Of course, some anachronisms may be discerned in its terms but even this fact has value, since it focuses attention on tangible conciliar developments and helps us to define them. The scope of the ordinances of 1430 and 1491/2 was wide; and the work of modern scholars enables the current practices of Henry VII's council to be firmly anchored in fact.

The ordinance is primarily concerned with the upholding of justice and the dispensation of patronage. The lengthy preamble reveals the king's intention of invading France and his justification for the enterprise. Henry VII was king in all the *plenitudo potestatis* of his predecessors as kings of England: *de facto* heir to the house of York as well as that of Lancaster and thus, ultimately, to the pretensions of Edward III and the dual monarchy of Henry V. His primary justification was, thus, the assertion of his claim to the throne of France and the restitution of his rights in those lands anciently belonging to the English crown. Reality, however, lay elsewhere, and Henry VII was nothing if not a political realist. As under Edward IV the words of aggression are tempered by the needs of defence in this and other documents concerning the expedition.⁹ There is a respect for the king's word and the king's honour which may not be entirely superficial. The ordinance thus rehearses the injuries suffered by Henry's allies at the hands of France; and raises the twin spectres of rebellion and invasion, to be seen in the machinations of the French. In consequence (we are told), the king is obliged to make war in defence of his realm, his rights, and his allies.¹⁰ This same propaganda, against the 'greate tyranny' of France, informs the ordinances regulating the conduct of the army which, harnessing the new technology of the printing press, Henry in person ordered to be printed.¹¹ The *Statutes and Ordinances of War* also were drawn, though substantially altered, from Lancastrian and even earlier precedent.¹² The printed texts were handed to each captain as he signed his indentures at the end of April or the beginning of May, ready for a June expedition,¹³ a fact which may perhaps help narrow the dating of the council ordinance. In both texts the appeal to the rule of justice was explicit. For the army, 'it behoveth aswele to ordre his folkes of the warre in Justice by the minystres of the lawe as to arryve theym in bataile by the chiefteyns of his army'¹⁴; for the realm, it was necessary to ensure the continuance of good government and 'due administracion' of justice during the period of the king's absence. Henry had therefore assigned the regency to Arthur, prince of Wales; the ordinance was to name certain men to be of his council and regulate their conduct.

The proposed size and composition of that council remain unknown. The appointed councillors were to subscribe their names to the ordinance. Whether or not their names were to be engrossed in the body of the text is unclear; but the document as now extant is unsigned, save for the king's authorisation, and insufficient space remains for any signatures to have been appended to the text. The council is likely to have included the chancellor, John Morton, and the

treasurer, John, Lord Dynham, both of whom remained in England during the king's absence in France; and perhaps also the duke of Bedford, the king's uncle.¹⁵ The keeper of the privy seal, Richard Fox, led an armed contingent to France and the master of the rolls also accompanied Henry.¹⁶ Reynold Bray, chancellor of the duchy of Lancaster, was exempted from service as a man-at-arms (though not from the provision of a retinue) but had new responsibilities imposed on him as treasurer of war, and he may also have acted as effective president of the council with the king.¹⁷ The little that is known of the regency council left in England by Edward IV in 1475 suggests that he appointed a substantial nucleus of at least nineteen men.¹⁸ Fifteen had signed the ordinance of 1430.¹⁹ The regency council of 1492 may have been of a similar size, its composition affected by the absence of king's councillors on service of war.²⁰ In terms of its conduct, however, its processes would surely reflect those of the parent body. Detailed directions to be observed in the king's absence follow the clause establishing the council. Most of the provisions are concerned with its processes and competence, especially the passing of bills to be heard before it, and with codes of conduct. Issues of wider relevance include consideration of the membership of the council, the role and status of its legal element, and its duty to preserve alike the king's rights and its own integrity.

First, by requiring the careful regulation of attendance, and by naming specific councillors, the ordinance addresses the question of conciliar membership, a problem of paramount importance throughout the fifteenth century and earlier. Injunctions that only sworn members or those specially called were to attend council meetings had been reiterated time and time again, and the articles of 1491/2 repeat almost word for word those of 1423, 1426 and 1430. For contemporaries, the provision was a real issue; for the historian of the council, the problem is one of interpretation. Henry VII's clerks of the council indeed recorded in the registers the names of all those contributing to any particular decision. But the surviving copies of presence lists are inadequate and can be misleading as a guide to membership, for they record all those present, not all of whom were sworn councillors, even to the extent of including ambassadors of foreign powers.²¹ Moreover, although Henry VII's council was indubitably large, the probable bias of the surviving extracts towards the larger meetings, and their inclusion of extraordinary sessions such as those of 12 November 1499 and November 1504,²² tend to obscure the way in which much conciliar business was done at smaller meetings of working councillors – as, indeed, the ordinance itself seems to envisage, by providing for a quorum of four as a minimum presence.²³ In practice the chancellor, the king, or one or two councillors might despatch routine business, but the provision, repeated from earlier precepts, was not entirely empty of reason. It was a useful restraint on a regency council, and at least one order of the prince's own council was to be reversed because it had not been taken by his whole council – although the occasion may have been as much a convenient excuse as an ultimate cause.²⁴ Some smaller meetings of the king's council are remembered in Caesar's extracts, but others may have gone

unrecorded in the registers. The ordinance fails to recognise the way in which the king took counsel informally, on matters of policy as well as administrative minutiae, in his chamber, on the hunting field, and elsewhere; and of which we have only tantalising glimpses.²⁵ It is their intimate involvement in the business of counsel, inside and outside the council chamber, which explains the absence, as well as the presence, of men such as Reynold Bray, the king's 'intimate councillor',²⁶ in surviving extracts from the registers. Others, such as the earl of Oxford and the duke of Bedford, were as useful to the king when resident in the areas in which they commanded political authority as they were when present in court or council meeting; letters could always supplement the spoken word. All this leads to considerable difficulty in evaluating council membership. The ordinance of 1491/2 could address the problems squarely, for it was designed to establish a body limited both in its life expectancy and its political power; in which all were equals before the board and whose names, in the interests of good government, had to be generally known and clearly stated. Such clarity was not always available to Henry VII who increased, rather than decreased, the responsibilities of the council in the interests of the state.

It is possible to compile a list of nearly 240 men who, in the course of the reign, either attended council meetings or were at some time given the appellation of councillor in chancery or exchequer files and enrolments; the tally also draws on the statements of Polydore Vergil.²⁷ Some of the evidence is contradictory, particularly in respect of those known as councillors only from their commissions as diplomatic envoys.²⁸ We cannot assume that a man remained a councillor until his death. As a yardstick, it would yield about a hundred names at any one time, which seems excessive. Henry VI's council recognised the possibility of retirement²⁹; John Mordaunt, one of the few councillors paid a retainer by Henry VII, was to enjoy his annuity only as long as he 'wele behavid hym selfe in the seid rome'.³⁰ The exercise of councillor-counting is of limited value, although it does indicate the wide spectrum on which Henry VII drew for advice, expertise and administrative assistance. Statutes and the ordinance itself recognise that a councillor was one channel through which justice and patronage might be dispensed³¹; and yet, for example, the author of the *Great Chronicle* equivocates concerning the status of the goldsmith, John Shaw.³² The ambiguity illustrates a particular point. Despite the close association of John Shaw, the 'kinges goldesmyth', with Reynold Bray, his ready access to the king himself, and the services he provided to Henry as a goldsmith and financier, he is never described as a councillor. His only recorded attendance in the council was in the company of his fellow goldsmith, Bartholomew Reed, at a meeting to discuss reform of the coinage.³³ This is surely the special call for which the ordinance made provision and for which, it may be suggested, there is some slight corroborative evidence.³⁴

Presence lists recorded participation, but the taking of the conciliar oath was the formal definition of membership of the council, and the ordinance, like its predecessors, duly affirms its importance.³⁵ The rather intractable evidence tends

to obscure the normality of the practice. The one example common to all the collections of precedents is the swearing of eight peers on 6 November 1498; but the occasion may have been as much an affirmation of loyalty to the dynasty as an admission to the council board.³⁶ However, Caesar preserves the text of a conciliar oath (allegedly of a councillor of requests); the content is not significantly different from the form preserved in a precedent book of the reign of Henry VIII. The two main points of difference are of emphasis only, and both are grounded in the provisions of the ordinance. Other writers supply additional instances of oath-taking and comment on the antiquity of the tradition.³⁷ On 2 November 1495 Thomas Hutton, doctor of laws, was admitted a councillor and swore to serve to the best of his ability according to the tenor of his oath; his admission, too important an occasion to leave to a deputy, is recorded by Robert Rydon, clerk of the council, although the register used was not that of Star Chamber itself.³⁸

For all the attention paid to the oath, conciliar membership rested ultimately on the prerogative right of the king to call to his council those whom he chose, whether or not they were formally sworn, and to exclude those whose presence he did not require. Practical politics and current necessity dictated attendance in council when the king was present: it was only when setting up analogues of the king's council, such as the Council in the Marches and in the North, and the regency council itself, that an exclusive list of councillors had to be prepared. Conversely, when, in 1493, Henry embarked on a progress which would take him away from London and its environs³⁹ for over six months, a rota provided for an attendant council which was sufficient in numbers and authority.⁴⁰ This journey, almost the longest in duration of the reign and, apart from sojourns at Woodstock, the most narrowly centred (on Warwick, Kenilworth and Northampton), gives us our first real glimpse of the council itinerant.⁴¹ The following year, when Henry prepared for a much shorter progress through Kent, and thence to Sheen, Westminster, Windsor and Woodstock, councillors attended in accordance with a revised rota, and the record of their meetings has been more fully preserved.⁴² Membership of the king's council in normal circumstances remained blurred at the edges well into the next century; yet perhaps it does not matter. Whether or not formally sworn or possessed of the honourable title of councillor, within the council chamber all were truly in *consiliarios*.⁴³

The second major question raised by this ordinance, as by its predecessors, is the status of the lawyers within the conciliar structure. The question is of particular relevance for the reign of Henry VII, which saw an increasing legal presence in the council, culminating in a discrete grouping of councillors as the council learned in the law.⁴⁴ The several issues of council ordinances echo each other in requiring the council to summon the judges as need arose to act as legal advisers and so remedy the deficiencies in its own corporate knowledge. Their names, and their advice, were to be recorded by the clerk of the council.⁴⁵ The implication is that the judges were called in as supernumeraries rather than as

councillors in their own right, just as, on occasion, they acted in chancery in response to a special summons.

The broad terms of the ordinance are a reminder that we are dealing with a reworked precedent and not a new creation. The underlying restrictions on the freedom of action of the regency council are valid, for Henry relinquished very little of his prerogative powers to Arthur and his advisers. It was customary, too, for the council to seek legal opinions from the judges. But the conciliar status of Henry VII's chief justices is not in doubt, and is amply supported by the record evidence. The puisne judges present more of a problem. For most, the only indications of conciliar membership are the presence lists extracted from the now lost council registers. They are listed together by name, or simply as *judices sex*, as a distinct group.⁴⁶ However, the terms of their judicial oaths required them to give the king counsel if required, and in this capacity they and three king's serjeants attended the meeting which determined the trial of Warwick. Most of the lawyers, and all the peers of the presence (with some additions) proceeded to the indictment and trial of Warwick nine days later.⁴⁷ Similarly, seven judges joined five councillors to draw up legislation to be passed in Ireland.⁴⁸ If we see them primarily as the king's legal counsellors rather than as sworn councillors, the concepts play havoc with the historian's tidy statistics but may come nearer to historical truth.⁴⁹ Nevertheless, Henry VII's council was a much larger body than either its Lancastrian forerunners or its late Tudor successors, and one in which the lawyers had a vital place. If Dudley compounded for the coif, becoming speaker and then a career councillor, and if Mordaunt lost both his annuity and his office of serjeant when chosen to succeed Bray,⁵⁰ he, William Greville and John Kingsmill, for example, were councillors before ever they obtained legal preferment. In 1493 Kingsmill was rewarded for his service; in 1496, by now a serjeant, he continued to accompany the king.⁵¹ Raised to the bench in 1504, he need not have ceased to be a councillor, although he would now have other calls on his time. In the end, the composition of Henry VII's council defies simple pigeon-holing. Coningsby and Brudenell, king's serjeants, sat in the council learned and intermittently signed warrants in a manner that suggests conciliar activity. In October 1507 Eliot and Pollard, king's serjeants, also signed three bills concerning the heirs of Thomas Green, whose misfortunes weave a tortuous thread through the conciliar history of the reign; and by 1509 they had joined king's councillors in the work of a conciliar court of audit.⁵² The pattern of legal prominence continued into the reign of Henry VIII, when it included not only practising lawyers but also men who had passed through the inns of court as a part of their formal education.⁵³ The professional lawyers who had gained considerable conciliar experience under Henry VII continued to serve the son as they had served the father. It was the advent of the privy council that definitively altered their status. The position of the chief justices was confirmed in Star Chamber but they were excluded from the privy council somewhere between 1536 and 1540. In Star Chamber the change was gradual; but there is no doubt that the privy council

excluded both judges and lawyers apart from the lord chancellor, an essentially political appointment.⁵⁴ Under Henry VII, the provisions of the ordinance emphasise the probability that not all the judges were sworn councillors, and the certainty that they would not, and could not, be expected to be present at each and every meeting; nor did the emergence of the council learned in the law alter their status or remove their access to the council. They attended as and when necessary, the *iurisperiti* of an unlearned council.

Similar caveats apply to the term 'officers', again repeated from earlier ordinances. I am unconvinced that any definition of the term would be meaningful either for the reign as a whole or for 1492, although in the latter case the distinction made between councillors and officers could be interpreted as implying the prohibition of government by a caucus rather than a consensus.⁵⁵ Great officers were *ex officio* councillors: but they were also the king's personal choice – so much so that Reynold Bray, *unum consulem domini Regis*, was appointed treasurer from February to July 1486 by Henry's word of mouth, without any patent.⁵⁶ The position of the serjeants – not, as under Henry VIII, only the king's serjeants – has already been discussed. As officers, they may be grouped with the solicitor and attorney-general. But although an acerbic letter from the earl of Oxford to Thomas Lucas, the king's solicitor, questions the latter's judgement, it expresses no doubt whatsoever concerning his conciliar status.⁵⁷ The expansion of the council's own secretariat post-dates 1492. Both of Henry VII's successive clerks of the council were on occasion designated councillors, and William Hudson may be wrong in belittling their standing.⁵⁸ Robert Sampson, clerk of the council attendant or, rather, of the court associated with the dean of the chapel, remained primarily a clerk of the privy seal and, indeed, his fellows deputised for him in his absence.⁵⁹ William Belus, 'oon of the clerkes of our counsaill', is first mentioned in 1507. But he is little more than a name and four yards of cloth at Henry VII's funeral, although in practice he may have deputised for Rydon.⁶⁰ The attornies were not, as they later became, an exclusive body, even if men such as Richard Turner clearly specialised in council business. Minor officers may safely be ignored.⁶¹

The distinctions made concerning judges and officers did, however, have point. They were designed to protect both the impartiality of the council and the rights of the king and his subjects. Had it survived, the council learned in the law might have provided a definitive solution to one aspect of this question. The fourteenth article of the ordinance suggests the difficulty of reconciling the interests of king and subject in matters touching the 'kinges prerogatif and frehold'. Such suits did come before the council learned, outside its own enforcement of the king's prerogative rights against offenders, and it seems in such cases to have made a genuine effort to find an equitable solution. Certainly its competence ran beyond the problems of feudal prerogative and financial profit that fuelled its existence. There are parallel developments in magnate councils of the period. Most magnates retained a number of legal advisers, who would at times emerge as a council or, rather, the council, in their own right:

specialised in function and membership but nonetheless the lord's council. They would concern themselves with the enforcement of the lord's rights over his tenants, and with suits of tenants and clients between themselves and against the lord. The council of the king as duke of Lancaster was but the largest and most sophisticated of such councils; the connection of the council learned with the duchy was no mere accident.⁶² But the king was its guiding spirit and its activities outside its equitable jurisdiction earned it such obloquy that, combined with the accession of a king of different temperament and in a strong undercurrent of political faction and reaction, ensured that the council learned in the law did not outlast Henry VII's reign; its remaining functions were resumed into a council enriched in legal expertise and membership.

The third major issue raised by the 1491/2 ordinance is two-fold and implicit rather than formally stated, but nonetheless fundamental to an understanding of the early Tudor council. First, it makes no separation of the council's judicial and administrative functions. Nor was there any need to make one: the same councillors attended to them both, in the same place and often on the same day, and they did so by the same right, namely, the king's trust in them. In this, the council of Henry VII is firmly in the medieval tradition, and the separation of the two jurisdictions is a basic divide between the councils of the early and later sixteenth century. In the immediate atmosphere of 1492, it is clear that Henry VII delegated relatively little of his prerogative powers, and in the circumstances it is doubtful whether the council of the ordinance was ever intended to exercise major administrative functions. Arthur received his commission as lieutenant on 2 October 1492.⁶³ Few warrants for the great seal survive for the period of the king's absence and, indeed, few seem to have been made. Of these, only two are attested at Westminster, where Arthur and the council sat.⁶⁴ These are for a licence to elect and a wine licence; the former required the king's prior permission. The petition for the wine licence, however, was read before the council on 23 October; it passed the privy seal on 24 October and the great seal three days later. The grant was noted in the council registers and Thomas Egerton, in the late sixteenth century, found the entry sufficiently unusual to be noted under 'Matters of state' in his collection of council precedents, though he may not have been aware of its full implications. The grantee in fact presented a second bill to the king in France, where it passed the privy seal on 23 October; the quantity of wine is identical, although the terms of the licence differ. This grant was not enrolled until 22 January 1493.⁶⁵ John Heron's second bill was the more typical; the overwhelming majority of the grants were authorised by the king himself in France, although this entailed considerable delay before the patent could be sealed. Because of this limitation, the administrative function of the council lies outside the scope of the present discussion and could not, indeed, be compressed into so short a space. Yet it is the lack of differentiation between the management of administration and justice that in part explains the precept that matters concerning the king were to be given precedence: judicial hearings followed administrative business. Urgent business might preclude the

hearing of private suits, but such an occasion was worthy of comment.⁶⁶ It underlines the ambiguity of the term 'bill' itself, for the procedure described could apply equally to petitions for grants and to bills of complaint in causes. Substantial recognisances, peremptory summons and direct intervention were ways of registering the king's concern as need arose; while suitors were not averse to pleading the king's interest and profit as an urgent reason for consideration of their case.⁶⁷

Second, given the continuing process of conciliar development and change under the Yorkists and Henry VII, the ordinance provides an unconscious warning against too rigid a distinction between forms of conciliar justice, between the council sitting in Star Chamber and the council accompanying an itinerant king. The old *ubicunque* formula obtained in bonds for appearance until at least 1495; though by the turn of the century Westminster is more usually specified as the venue. But there is some diversity in the formulae; Westminster does not always mean Star Chamber, not least because of the existence of the council learned (which, if only because of the prominence of its members, might also despatch its business when attendant on the king). The councillors with the king, or the king's secretary acting alone, might take bonds or give orders for appearance at Westminster.⁶⁸ Specific citations are few, and the principal means of securing appearance was, in any case, the privy seal.⁶⁹ But whatever the place of meeting, there are no distinctions in conciliar status and all councillors were, in the words of Rydon's graceful address to Robert Middleton, *benemerito*.⁷⁰ The ordinance itself enjoins that the cause of the poorest man was to be heard first, and that he was to receive his legal aid without fees, an injunction more commonly associated with the council attendant than with the council sitting in Star Chamber, although in practice provision for pleading in *forma pauperis* obtained in both, under restrictions intended, if in vain, to eliminate frivolous suits.⁷¹ When the exchequer, in its turn, developed an equitable jurisdiction, it made a similar provision: perhaps an indication of how far, and however imperfectly, the idea of *noblesse oblige* with which we have become familiar in terms of arbitration procedures (used extensively by the council also) permeated the practice of the courts of equity, and underpins the ordinance itself.⁷²

Considered assessment is, however, hampered by the limitations and weighting of current secondary studies. We know a great deal about the judicial activities of the council at Westminster, on which it would be otiose to enlarge,⁷³ but much less about the council learned (from c. 1498) or the council itinerant, for which records survive with continuity only from 1493. Occasionally known even at this early date as the council or court of the request⁷⁴, the councillors associated with the dean of the chapel of the household seem to have given some attention to poor men's causes (the term is a relative one), although not yet to the exclusion of men of greater substance, nor of suits brought by members of the king's household, who might not conveniently absent themselves from the king's person.⁷⁵ The locative separation of the king's councillors

acting for the king in his judicial capacity ultimately necessitated the growth of separate bureaucratic systems. These contributed to the definitive separation of the courts over the next half-century. Nevertheless, the ordinance, read in association with other records of the council, is a useful reminder of the lack of differentiation, whether of function, personnel or concept, within the conciliar structure. Of course, we may see delegation: in 1489 and 1502, for example, the king was at Westminster for much of the michaelmas term, but a group of councillors continued in session as a court outside Star Chamber, and in 1504 they sat at Westminster for most of the legal year, handling, however briefly, over 200 suits in the course of twelve months (of which 19 were summarily dismissed due to lack of prosecution of the bill or of evidence to sustain the case). In 1500 Thomas Savage and other councillors returned from Calais in advance of the king for the despatch of outstanding business, postponed to the quindene of trinity from the previous term.⁷⁶ But away from London and its environs, litigants were as likely to come before Fox, Bray, Lovell and Mordaunt as before the dean and his associates; they, in turn, joined other councillors in Star Chamber as need arose. This unity was reinforced by arbitration procedures, which were referred to councillors under another name as well as to lawyers and local men of worship.⁷⁷ The Tudor 'court of requests' may have been largely the product of Wolsey's reforms, and 'Star Chamber' the corollary to the emergence of the privy council.⁷⁸ For the council of Henry VII, the most appropriate metaphor is perhaps a trinitarian one: one council but three courts, of one substance and interest, and each court in itself the personification of royal and, thus, conciliar justice.

Interesting as are the questions which this ordinance may raise on the larger problems of the council and its interpretation, it is perhaps more immediately accessible in its enumeration of detailed points of process, and of the duties and obligations of individual officers and councillors. Despite their derivation from earlier precedents, they have a wider relevance than to a mere council of regency. First, the ordinance lays down that the council is to observe terms, except in matters of great importance or matters requiring speedy action.⁷⁹ This is neither surprising nor an absolute prohibition, and the records – *acta*, summons, and endorsements on petitions – offer their own confirmation. The detailed exposition of the treatment of bills is potentially of greater interest. One day in the week was to be set aside for the hearing of bills, and the answer was to be given to the suitor on the following Friday. According to time-honoured conciliar practice, this answer was to be endorsed on the bill by the clerk of the council. The ordinance also allows for mature deliberation of important matters or issues upon which it might prove difficult to reach a decision. In the latter case, a majority opinion was to prevail, each councillor having severally given his opinion, provided that at least four people and an officer assented, and that they were the majority of those men present.⁸⁰

None of these provisions was new, and in both its timetabling and in the role assigned to the clerk this ordinance repeats that of 1430 rather than the

provisions of 1426. It thus does not specify Wednesday as the particular day for the hearing of suits. But Henry VII's council was not strictly timetabled, although Wolsey was to experiment, and in the Elizabethan court of Star Chamber, Wednesday and Friday were the main days of audience.⁸¹ Further, the provisions are a pale reflection of the growing prominence of the clerk and the way in which process was becoming routine. Henry VII was under no illusions as to the vital role played by the clerk in the smooth running of the conciliar machine. At the very period at which the king and his advisers were considering the position of the regency council, John Baldiswell, clerk of the council since 1486, lost his reason, *quod non mediocriter dolemus*. Therefore, ran the privy seal warrant of 26 April 1492, the king being unwilling (in William Mill's bland translation) 'that the Councell should. . . be unserved for the multitude of hard Causes dayly rising in the said Counsell. . .', Robert Rydon was appointed to the office, in which he had earlier deputised.⁸² His distinctive hand duly appears on endorsements on bills, whether a sworn statement of the truth of the allegations, or an order for appearance or process, as well as depositions and other documents of the court. In 1492, however, he appears to have accompanied the king to France⁸³, and his place at Westminster may well have been taken by one of the clerks of the signet or privy seal, in the subordinate role implied in the ordinance.

The ordinance goes on to require that matters were only to be dealt with in the place ordained for the council, a formula sometimes used in the first book of the council itinerant and realised in practice in Star Chamber.⁸⁴ But unless we simply assume that procedure was lax in the observation of the rule that the lords present were to sign their names to their answer either in the council chamber or subsequently, when the clerk brought the document to them, we may perhaps conclude that this particular provision was restricted to the constitutional niceties of a regency council and its collective responsibility for its decisions.⁸⁵ A petition surviving from the period of Edward IV's French expedition of 1475 inverts this relationship, but goes to the nub of the problems inherent in the exercise of the king's prerogative in his absence. A letter patent, and the instruments which lay behind it, required a sufficient warrant. Recognising that Edward IV had left his 'pouer royall' in his young son's hands, the petitioner requested that his bill should be 'signed by the kingis counsaile for a discharge unto your secretary to make a warant undir your signet', which was in its turn to move the seals. In fact, his bill, signed by seven councillors, was sent as a direct warrant to the chancery.⁸⁶ Under Henry VI, often in the exceptional circumstances of a reign which suffered, first, a long minority and, then, the incapacity of the king, there are numerous examples of bills and warrants signed by councillors, or authenticated with a presence list endorsed by the clerk. But for Henry VII, although much judicial material survives signed or written by the clerk of the council or the dean of the chapel of the household, there is, outside the activities of the council learned, no immediate parallel with earlier practice. Only one warrant of traditional type, signed by the lords of the council, is

extant. It relates to bills to be passed in the parliament of Ireland, and the procedure was specifically enjoined by statute.⁸⁷ The paucity of examples cannot be ascribed to archival loss alone; nor is it an indication of conciliar impotence.⁸⁸ If the tenets of the ordinance are superimposed on the council in normal circumstances, the growing sophistication of its record keeping is apparent. The maintenance of registers, and their inclusion of full presence lists, to some extent obviated the need to sign the bills themselves. When Rydon, as clerk, had occasion to exemplify the proceedings of the council, he seldom saw cause to append a presence list; the authority of the books was sufficient.⁸⁹ Only in the charged atmosphere of the first years of the reign of Henry's son did the council warrant make a brief re-appearance: not only for bills signed by Henry VII's executors for matters relating to the performance of his will, but also for bills signed by an inner ring of councillors for the conduct of general business.⁹⁰

Even under Henry VII there are differences between the conciliar courts. The registers of the council attendant are, by the turn of the century, erratic in recording attendance, although presence lists or the actual signatures of councillors are still occasionally entered in the books. The dean of the chapel is responsible for many of the endorsements on bills, a responsibility which passed finally to the clerk of the council only when the court which had originated in the immediate council developed into the tangentially conciliar court of requests. Robert Sampson, the clerk, seems mainly to have given his attention to the council books, to the writing of privy seals for appearance and other subsidiary documents produced in the course of litigation. The early years of Henry VIII offer a closer parallel, for other councillors, including Thomas Wolsey as almoner and James Denton, king's chaplain, and the lawyer, Richard Sutton, may be found signing with the dean.⁹¹ The council sitting in the duchy chamber, that is, the council learned in the law, was singular in this, as in much else. Its handling of certain types of grant is a complex issue into which it is not proposed to enter here. But although in judicial matters it, too, proceeded by English bill, it is rare for any bill in any suit heard before it to carry an endorsement, which is the more unusual in that the duchy council itself observed the customary forms.⁹²

If we may discern some anachronisms and, perhaps, restrictions on the council in certain clauses borrowed in 1492 with little or no amendment from earlier provisions, the eighth and thirteenth articles show more substantial changes. These may, however, be easily explained in terms of the different political situations of the 1420s and 1492. With an active, if absent, king, the clause giving the royal dukes an overriding casting vote, and powers of taking delaying action if siding with a minority opinion, could safely be ignored. Whereas in 1430 the council of Henry VI was redefining its position after the ending of the protectorate, and was preparing for a prolonged absence of unknown duration of the child king⁹³, it is unlikely that Henry VII, in 1492, desired or anticipated a protracted campaign. Likewise, all reference to parliament could be omitted as irrelevant, and a clause relating to appointments

to benefices was simply dropped. It had long been obsolete, and Arthur's powers in matters spiritual were strictly defined by the terms of his commission as lieutenant.⁹⁴ But in the eighth article, the president of the council was substituted for Bedford and Gloucester. Matters of importance were to be discussed by all the council, or at least a majority of it, and for issues which were normally passed only in consultation with the king, the advice of the president of the council was to be sought.

The interest in this alteration lies in the way in which the use of the president seems to be accepted as a normal procedure. The concept was a familiar one to the council assigned to the prince in the marches of Wales under both Edward IV and Henry VII himself, and there may have been earlier precedents.⁹⁵ But although the keeper of the privy seal might preside over the council in the chancellor's absence (once, at least, with the title of president) and would continue to do so throughout the reign,⁹⁶ the office does not emerge with any clarity until 1495, three years after the date of the ordinance. William Hudson, with the registers before him, remarked on the frequency with which the president officiated in Star Chamber in 1496-98, and the books and other records of the council attendant offer examples both of the dean seeking his advice and of independent action.⁹⁷ The ordinance and, indeed, the early records of the council itinerant, in which the king is a watchful eye in the background rather than present at judicial hearings, suggest that the office may have allowed as much for the absence of the king as for that of the lord chancellor. The prominence of the president under Henry VII may well have owed something to the powerful personality of Thomas Savage, for whom the office was a logical progression from that of dean of the chapel of the household, one of the customary recipients of petitions destined for the council and the king. But the ordinance itself neither enlarges on the office nor names its holder, and in the restricted circumstances of 1492 it may have proved an over-provision clumsily adapted from 1430.

If opinions diverged within the council, discussion was to be deferred to a subsequent day. Each councillor was then to state his opinion and, indeed, the obligation on him to do so was strongly affirmed.⁹⁸ This method of procedure can be corroborated from other sources. The Spanish ambassador, Roderigo Gonzales de Puebla, professed utter dismay after a meeting which he had attended, by invitation, to discuss a proposed alliance with Spain. Each councillor had stood up and spoken his mind, though many had not been present at earlier discussions. None would agree with another, and the argument had finally to be settled by the king himself, who directed the discussion along more profitable lines.⁹⁹ This particular occasion may have been stage-managed, but it was in fact usual for Henry VII's council to proceed from discussion by a small group of councillors to open debate before the full council in matters affecting foreign policy. Nevertheless, de Puebla's account does provide some idea of the conduct of discussions within the council; and there are other examples both of delegation of specialised matters and of requests for expert advice.¹⁰⁰ A similar

discretion was allowed the council's jurisdiction. The council's writ ran if parties were unequally matched, or for other causes that seemed reasonable, even if the matter might technically be pursued at common law. This jurisdictional plea was frequently invoked in bar by defendants in suits brought before the council – although most then proceeded to answer the plaintiff's bill. The council itself both ordered the stay of proceedings at common law and remitted cases there; and in some actions proceeded no further than the reading of the bill before terminating its own interest in the suit.¹⁰¹

Most of the remaining articles are concerned with codes of conduct and repeat the similar provisions of 1430. The clauses dealing with the probity of councillors and conciliar officers reflect a very real concern with doing justice, perhaps the highest and most fundamental obligation of medieval kingship: a duty fully acknowledged by Henry VII, for whom it was bolstered by an intense irritation at importunate pleading.¹⁰² The detailed provisions of the ordinance open on this theme, with the requirement that no-one was to promise favour in any suit, but only fair hearing before the whole council. A councillor was not to be partisan, and on matters touching himself he was to be absent during the proceedings; although even the truncated remains of the council's archive furnish at least three examples of orders affecting councillors of the presence, and impartiality was honoured in the breach as well as the observance. Thomas Savage was forced by fellow councillors 'to ryse. . . and goo to the flore' until a matter in which he was closely concerned had been discussed. This he did 'with full yl wyll'. Richard Sutton merely promised his silence when a case was to be heard before the dean of the chapel, in a suit in which he himself was the plaintiff, and which was to be heard in a court in which he frequently sat. Not surprisingly, the defendants doubted his assurance of a fair hearing 'before the kynges honerabull counsell where indeferent justes may be hadde' and prayed for remission to the common law.¹⁰³ The councillor was warned against the favoured tactic of labouring – although kings, too, were capable of manipulation of the law – and against showing displeasure towards the king's officers for acts done in the course of duty. He was not to maintain wrongdoers, and was further enjoined to see that his servants and social inferiors honoured the same code.¹⁰⁴ Ironically, the very offences that these clauses prohibit provided the ostensible reason for a major quarrel between Thomas Savage, archbishop of York and a former president of the council, and the earl of Northumberland in a dispute which called for the personal intervention of the king.¹⁰⁵ But councillors were only human, with patronage and a position to maintain, and this was as true of Bray as of Savage, or John Hussey, who was suspended from Henry VIII's council because of his alleged misdeeds.¹⁰⁶ The gifts prohibited to a councillor were the lubricant of the wheels of patronage. Outstanding instances, such as Bray's intervention for the reversal of the attainder of John, Lord Zouche in return for an undisputed title to certain of Zouche's lands, Richard Guildford's pre-emption of an attainder, by which he acquired lands (and paid Henry VII for the pardon), and, indeed, the pensions that were the probable profit to Giles, Lord

Daubeney, Thomas Lovell and Reynold Bray of 1492, can hardly have been effected without the king's tacit assent.¹⁰⁷ Yet we should not suspend belief merely because theory diverged from practice, nor because the articles were derived with so little amendment from earlier precepts. There are numerous examples of responsible behaviour to set against abuses of privilege. The colourful language of the pleadings highlight disorder in the interests of the party suing. Henry VII may well have lectured Lord Hastings on his responsibilities even as he swore the oath of a councillor; certainly the recognisance under which he was bound a month later, the result of his dispute with the marquis of Dorset, was a measure of the king's displeasure.¹⁰⁸ The prohibitions applied to a councillor's conduct are a reasonable, if incomplete, catalogue of the offences considered at some time by the council of Henry VII; whilst clauses relating to the secrecy of matters debated in council, to the primacy of the king's affairs, to the watchful eye to be kept by the councillor within his own community, and to his impartiality within the council chamber, went to the very heart of conciliar office. They were central to the oath which we must assume, despite the defects of the evidence, was taken by all councillors. The precedent transcribed by Julius Caesar is firmly dated to Henry's twenty-first year, more than a decade after the making of the present ordinance.¹⁰⁹

What can we conclude from all this? Before leaving the year 1492, it is worth looking at the extraordinary document by which Henry VII effectively terminated his campaign. It purports to be a memorial from Henry's captains and councillors, advising him to accept the peace terms offered by the French. If we disregard the bombast and, for the moment, suspend our cynicism, the document bears re-examination. First, it appears to be written throughout in the hand of Robert Rydon, clerk of the council, although it is not signed by him. Second, it describes how Henry VII, 'by a general request of the substance of his counsellours of England, at his palois of Westminster. . . was instantlie required and prayde' to postpone the expedition (already thrice delayed) 'untill a moor convenable season'; this advice the king rejected, 'prying above all thing his promises made to the king of Romainys, and also to his subgiетts in his realme'. Third, it describes how Henry assembled, on 27 October, 'in his feld beside Bolen, all the lordys, statys, counsellours and capitaignes of his armye', and requested that they would 'debate and suade among thaim with diligence' the articles proposed, and 'thereupon to geve his grace such advertisement and counsell as shold accord with thair trouthis and as thai ought bi thair alligeaunce geve to his highnes in this behalf'. In consequence, they assembled 'in oon hole counsell' on the same day, and debated 'by goode, ripe and sad deliberation; and therupon by oon assent put thair reasons and reasonable mocions of thair reasons in wrytyng'. With those arguments and excuses we are not here concerned; but, in conclusion, all those present signed their names to the document, which is dated on the feast of All Hallows (1 November). Although not entered in strict order of precedence, the signatures of twenty-one lords head the list, followed by the king's councillors below the peerage rank, including Bray, Lovell, Guildford

and John Risley, and then the king's other captains – a probable total of eighty-one names in all.¹¹⁰ Can we not see in this a meeting of the king's council, writ large and in exceptional circumstances? The memorial rehearses the process from initial discussion by a few councillors to open discussion at a large meeting, each man giving his opinion, and acknowledging his participation in the decision-making by signing the document once it was written up by the clerk of the council. It cites the conciliar pre-history of the voyage. That (if we believe the memorial) Henry should have rejected the advice of the 'substance of his counsellours of Englund' in embarking for France is not entirely surprising. He had with great difficulty made a large investment in money, men and resources: mercenaries (some, at the siege of Sluys, paid since April, and including councillors and a council clerk) as well as retinues; mines and a mill for gunshot as well as breweries. He had raised taxes, loans – and the benevolence, the arrears of which remained to trouble king, council and realm long after 1492. The support of Maximilian and the element of surprise were both largely illusory.¹¹¹ Moreover, according to Polydore Vergil, Charles VIII was suing for peace even before Henry VII's army left England, and the exchequer records tell their own story of hectic diplomatic activity.¹¹² Both kings were well aware of the precedent set by Edward IV in 1475. Above all, the essence of the council was advice; decisions required the king's delegated authority or direct warrant. This is the message of the council ordinance, and the language of 1492 is the language of the council itself.

It would be naive to look for complete realisation of the council ordinance, either in 1492, or in the day-to-day practices of Henry VII's council over the twenty-four years of his reign. There are striking parallels, but also discrepancies, and gaps in our understanding. Under Henry VI, similar ordinances had brought some positive change; they had also shown themselves capable of a diversity of interpretation, not least by the lords involved in the regency crisis of 1453–54.¹¹³ Henry VII's council ordinance is a fragment of a larger story, part conciliar history, part the thought processes of an enigmatic king. The silence of the Tudor polemicists, who saw in Henry VI's ordinances the origins of their own courts, argues that the 1491/2 ordinance was unknown to them, and it may well never have received legal validation in its present form. But its very existence is a gentle reminder of the extent to which, even now, the history of the early Tudor council remains unwritten.¹¹⁴

Appendix¹

H R

The kyng oure sovereign lord kyng Henry the vijth by the grace of God king of Englund and of Fraunce and lord of Ireland; well consideryng thinsaciabie covetise and voluptuous desire of his grete enemy Charolus, callyng hym self kyng of Fraunce. The which by his great malice, myght and power incurtiously usurpeth and occupieth not only the crowne and regally of Fraunce, the duchies of Normandy, Guyan', Turayn' and the countie of Mayne, unto oure seid sovereign lord rightwisly and undoubtedly belonging. And by oppression and force hath late reduced unto his obeisaunce the duchie of Bretayn'; and taken away ayenst the lawes of god and of his church the excellent princes Anne, duches of the same, late affianced and spoused unto the most high and myghty prynce the kyng of Romainys. But also wrongfully withholdeth from the most myghty prynce the kyng of Spayne the counties of Russilion and Sardayne. Exhortyng and movyng daily aswell the subgettis of Flaundres to fall in rebellion ayenst their prince, as the kynges subgietties of Ireland to rebell ayenst his highnes, and the kyng of Scotland to make warre ayenst hym and this his land. And over that maketh daily opyn² comunicacions to encroche and bryng unto his obeisaunce the towne and marches of Caleis. And finally to invade this land of Englund to thextreme subversion of the same. Hath ordeyned by thadvyse, counseill and assent of all the lordes spirituell and temporall and the commons of this his land, and fully determined, with the holpe and grace of almyghty god, by the mediacion of that blessid virgyne Mary his moder, and seint George, within breve tyme to enter in his moost noble person with an armye riall into the realme of Fraunce. And to invade his seid aunsiaunt enemye, not oonly for the defence of this his land and his true subgetties, but also for the recoveryng of his right within his seid realme of Fraunce, and for the defence of other his allies and confederates as he is obliged to doo.

- (1) Item. The kinges good grace specially willing and desiryng this his londe of England to be put in good order in the tyme of his absence, so that due administracion of iustice may be theryn observed, and this land frome outward enemyes myghtly defended; and his true subgetties therof from all oppression relevyed and preserved; hath named, deputed and made the right high and myghty prince Arthure, his first begoten son, prince of Waleis, duc of Cornwall, and erle of Chestre, to be his lieutenaunt, regent and governour of this his land of England in the seid tyme of his absence; ordeyng and enstablisshyng those to be of his counsell whose

names beth under writen. And they to counseill and serve hym, and further demean theymself in maner and fourme as hereafter foloweth.

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- (2) Item. That no lord³ nor other man of the counseill of the seid prince⁴ in any sute that shalbe made unto hym shall promytte⁵ any favour, nother in billes of right, of office, benefice, nor of other thyng that belongeth to the counseill, but oonly aunswer that the bill shalbe seen by all the counseill, and the partie suyng so to have resonable aunswer.
- (3) Item. That in the playne terme tyme the seid counseill shall oon day in the weke entende to the redyng of the billes put to the seid counseill, and to aunsweryng them. And their aunswers shalbe endoced on the bill by the clerke of the seid counseill; and on the Friday declared to the partie suyng. But if grete and notable causes touching the kinges realmes and his lordshippes let it.
- (4) Item. That all billes that comprehendeth matiers determinable at the comyn lawe shalbe remytteth ther to be determined. But yf so be that the discrecion of the counseill fele to grete myght on that oon side and unmyght on that other or ellis other cause resonabill that shall move them.
- (5) Item. That no man of the seid counseill shall take uppon hym to be partie in any matier to be sped in the counseill but if it touche hym self. In the which case he whome the seid matier toucheth shall not be present while the same matier that toucheth hym is in communynge.⁶
- (6) Item. That every man of the seid counseill shall have full fredome to say what hym thynketh to all matiers that shalbe moved⁷ or treted in the seid counseill; and noo personne in the seid counseill shall conceyve indignacion, displeaunce ne wrathe ayenst any other of the seid counseill for sayng his advice or intent to any request or matier that shalbe spoken or pourposed in the seid counseill, whom that ever it toucheth; alwey due reverence kepte to every astate and personne.
- (7) Item. That forasmuche as it hath⁸ ben often tymes knowen that matiers which hath ben spoke and treted in the seid counseill have ben publisshed and discovered, which thyng hath caused personnes of the seid counseill to ymagyne streyngely oon ayenst an other⁹, and divers personnes of the seid counseill to renne in maugre and indignacion of personnes out of the counseill, and other inconveniencies.¹⁰ That therfor from this day forward noo personne of what condicion or degre he be

shalbe suffred to abide in the counseill whiles matiers of the seid counseill be treted theryn, save oonly those that ben sworn unto the counseill, but yf thay be specially called therto by thauctoritie of the counseill aforeseid.

- (8) Item. That in all thynges that oweth to passe and beth agreed by the seid counseill ther be vj or iiij at the lest present of the seid counseill, withouth the officers, assembled in fourme of counseill and in place appointed therfor. And if ther be such thinges that the king hath ben accustomed to be counceiled of that then the seid lordes procede not theryn without thadvyse of the president of the seid counseill for the tyme beyng.¹¹ So alweis that no matier be taken as assented but at the lest ther assent therto iiij counseillers and an officer, whose assent shall not suffice but if they make the more parte of the nombre that is then present in the counseill.
- (9) Item. That no bill shall be sped but in the place ordeyned for counseill, the counseill beyng there assembled and the bill first redde ther before theym all. And that every man singularly shall say his advise therto. And after that it shalbe subscribed by the lordes, be it in the seid place or other, wher the clerk of the counseill shall bryng it hym self unto theym.
- (10) Item. That the correcion, punicion or removying of any counseiller or grete officer of the kinges shall procede of thassent and thadvyse of the more parte of all those that beth appointed of the princes counseill.¹²
- (11) Item. That all the matiers that touche the king shalbe preferred before all others.¹³
- (12) Item. That oute of the term tyme no thyng shalbe sped in the counseill but such thing as is for the good of the king and of his land, and such as requireth necessarily¹⁴ and hasty spede and may not goodly be abiden unto the terme tyme.
- (13) Item. Yf so be that any matier sued in the counseill fall in divers oppinions that then the matier shall dwell in deliberacion till the next day of the counseill, at the which day every man shall say his reason and, after ceveracion so had, finally shall be stonde to the oppinion of the more parte.¹⁵
- (14) Item. Forasmuche as it is likly that many matiers shalbe treted before the counseill the which toucheth the kinges prerogatif and frehold on that oon partie and other of his subgetties on that other, in the which matiers the counseill is not lerned to kepe the kinges right and the parties bothe without thadvyse of the kinges justice which beth lerned bothe in his

prerogative and common law. That in all such matters the kinges juges shalbe called therto and their advyse with their names also to be entred of recorde what and howe they determyn and advyse theryn.

- (15) Item. That the clerk of the counseill shalbe sworn that every day that the counseill sitteth on any billes betwex partie and partie, that he shall as ferre as he can loke which is the poverest seuters bill: that to be first rede and aunswerd. And the kinges seriauntis to be sworn truly and pleylny to yeve the pore man that for such is accept to be of counseill, assistance and true counseill in his matier so to be sued, without any good takyng of hym uppon payne of discharging theym of their offices.
- (16) Item. In eschewyng of riotous excesses, mysghovernauncis and disobeisaunce ayenst the kinges astate and ayenst his lawes, and in ensample yevyng of restfull rewle and good governaunce hereafter to all his subgetties; it is advysed, appointed and ordeyned that no lord of the seid counseill of what astate, degre or condicion that he be, shall wetyngly receyve, cherissh, hold in household ne maynteyn pillours, robbers, oppressours of the people, manslaughterers, felones, outlawes, ravyschers of women ayenst the lawe, unlafulfull hunters in forestis, parkis, or warennys, or any other open mysdoers, or any opynly named or famed for such, till his innocency be declared. And that nether by colour or occasion of feoffement or yeft of goodes, passed by dede nor otherwise, any of the seid lordes shall take any other mennys causes or quarell in favour, supportacion or mayntenaunce, as by worde, by message, nor by writing to officer, juge, jure, or to partie, or by yeft of his clothyng and lyveres, or takyng into his service the partie. Nor conceyve ayenst any juge or officer indignacion or displeaunce for doynge of his office in fourme of lawe. And that they shall kepe this not oonly in their own personnes but that they se all other in their contrees asmoch as in theym is, and their servauntis and all other which beth under theym or lesse astate do the same. And if they do the contrarie make hym without delay leve it or ellis put hym away from hym.¹⁶
- (17) Item. That nether by occasion or colour or yeft or purchase any of the seid lordes shall be theym or any other persone to their use or behofe receyve or take any astate, feoffement or possession of landes, possessions or other goodes that standeth or shall stand in debate or demand without that it be first spoken therof and communyed opynly in the seid counseill, and thoght to the same or the more part thereof, they considering the circumstaunces and the trowth of the mater, be lafulfull so to do.
- (18) Item. That noon of the seid lordis of the seid counseill shall receyve or take by hym, ne suffir to be receyved by any persone to his profite or

behofe any gifte of goode¹⁶ or bonde or promes of gode for *to favor* or further any matier to be *demened* in *the seid counsaill ne for promocion* or furtheryng of any persone to office or benefice to be disposed by thadvyse of the seid counsaill, nor any of the kynges officers for to do any thyng that belongeth to his office. And who so dothe the contrarie, it knowen, shall restore to the partie the double and to the king vj times asmych as he so receyveth; and not be suffred after that to sitte or occupie in the seid counsaill till the king be otherwise advysed.

- (19) Item. That every lord and other persone of the seid counsaill shall subscribe his names under these presentes with his hand, and be sworne to observe and kepe duly and truly all these before writen articles and every of theym.
- (20) Item. All and every lord and personne whose names ben under writen have sworn to observe, kepe and fulfill truly and entierly all thies before writen articles and everich of theym. In preve and witnes wherof they [have subscribed their names.

endorsed

Direcciones servande in ausencia Regis¹⁷

1. PRO, C82/329/53. Capitals, punctuation, 'u' and 'v' are modernised. Words in italics are supplied from PPC, IV, 59–66. Reference is given to the collated text in PPC, but minor variants in spelling have not been noted. The 1491/2 text is written throughout in a chancery hand.
2. Interlined.
3. Nother my Lord of Bedford nor of Gloucestre ne non other man (1430).
4. Seid counsaill (1430).
5. Behote (1430).
6. Follows BL, Cotton, Titus EV.
7. Demened (1430).
8. Hath often tymes be (1430).
9. Of another (1430).
10. Grete inconveniences (1430).
11. Withoute thavyse of my Lord of Bedford, him beyng in this land, or be my Lord of Gloucestre in his absence, or elles be his assent.
12. Kynges counsaill (1430).
13. As well in parliament as in counsaill (1430). The next clause (1430, art. 11), relating to appointments to offices and benefices, is here omitted.
14. Asketh necessary (1430).
15. In 1430 the royal dukes were given both a casting vote and limited powers of delaying action, rather than the simple majority verdict preferred in 1492: PPC, IV, 62–63.
16. From Art. 16 the 1491/2 ordinance follows the variants of the 1429/30 parliament roll rather than the other two manuscripts: PPC, IV, 59–66. Arts. 19–20 are an adaptation of the closing phrases entered in Latin on the parliament roll.
17. This endorsement is in a different hand from that of the text, but is too faded to be fully legible or identifiable.

Notes

1. I am indebted to Drs. J.A. Guy, E.M. Hallam and A.S. Bevan for their comments on earlier drafts of this paper. I owe special thanks to Dr. Guy for discussions of conciliar problems over many years; and for a copy of H.E. Huntington Library MS. Ellesmere 2652, cited below.
2. J.R. Lander, *Crown and Nobility, 1450–1509* (1976), pp. 171–99; *Select Cases in the Council of Henry VII*, ed. C.G. Bayne and W.H. Dunham (Selden Soc., LXXV, 1958), pp. xvi–xviii; PRO, E163/8/36 (prince's council, February 1475). It is possible that Henry VII's first council register was a continuation of one begun under Richard III, but the few pre-1485 precedents in HEH MS.E1.2652, f.1–3, are taken from chancery enrolments (see especially f.1–1v and PRO, C66/546, m.26, annotated 'Star Chamber' in a late-Tudor hand). See also A.L. Brown, 'The king's councillors in fifteenth-century England', *TRHS*, 5th ser., XVIII (1968), 95–97; R.A. Griffiths, 'The king's council and the protectorate of the duke of York, 1453–1454', *EHR*, XCIX (1984), 67–82; BL, Hargrave MS. 216, f. 100.
3. Bayne, *Select Cases*, pp. xi–xviii; J.A. Guy, *The Court of Star Chamber and its records to the reign of Elizabeth I* (1985), pp. 29–36.
4. PRO, C82/329/53; see above, pp. 244–48. The articles of the ordinance have been numbered for convenience of reference. The position of the filing holes suggests that the document is at present misplaced.
5. R.L. Storey, *The Reign of Henry VII* (1968), pp. 79–90; R.B. Wernham, *Before the Armada* (1966), pp. 35–37; S.B. Chrimes, *Henry VII* (1972), p. 144.
6. PRO, C82/95–98; E101/413/2/2, f.36 (illustrated in Chrimes, *Henry VII*, p. 145).
7. PPC, III, 213–21; IV, 59–66; VI, 316–20; *Rot. Parl.*, IV, 175–76, 343–44; R.A. Griffiths, *The Reign of King Henry VI* (1981), pp. 28–43, 275–86.
8. *Rot. Parl.*, IV, 343–44; the parliament roll, PRO, C65/89, bears no overt sign of exemplification. Other texts, both contemporary with the reign of Henry VI, are C49/Roll 18, printed PPC, IV, 59–66, and BL, Cotton, Titus EV, f.237–40.
9. For Edward IV, see Lander, *Crown and Nobility*, pp. 220–41, esp. pp. 225–31.
10. PRO, C82/329/53; above, p. 244. for the background, see Chrimes, *Henry VII*, pp. 80–83, 88; CSP, Milan, nos. 452, 463; PRO, E404/81, 12 February 8 Hen. VII, compensation paid for a French raid of 1491.
11. PRO, E163/22/3/3, 15, 23 (colophon), amending D.E. Rhodes, 'The Statutes and Ordinances of War', *The Library*, 6th ser., III, 340–43.
12. For which see *Excerpta Historica*, ed. S. Bentley (1833), pp. 28–43; BL, Lansdowne MS. 285, f.141–50v; BL, Add. MS. 33191a.
13. *Foedera*, XII, 477–80, from PRO, E101/72/3–6. For the repeated delays, from April and then by stages to October, *ibid.*, esp. E101/72/3, no. 4 and E101/72/6, no. 18; CSP, *Spain*, I, 33–43; CSP, Milan, I, nos. 456, 462–63; *The Paston Letters*, ed. James Gairdner (6 vols., 1904), VI, 143–45.
14. PRO, E163/22/3/3.
15. PRO, C82/99–101 (notes of delivery and treasurer's warrants); E405/78, m.54–55; Bedford did not sign the petition for peace, and his retinue was led by an esquire, Owain ap Jankyn, PRO, E30/612; E36/285, f.45.
16. PRO, E36/285, f.37v; E36/208, p. 114; *The Anglica Historia of Polydore Vergil*, ed. Denys Hay (Camden Soc., 3rd. ser., LXXIV, 1950), p.57.
17. PRO, E101/72/3, no.15; E163/22/3/3, 15; E405/78, m.54–55 (payments for messengers).
18. C.L. Scofield, *The Life and Reign of Edward IV* (2 vols., 1923), II, 125–26. Edward IV appointed chancellors for both England and France, a precedent not followed by Henry VII, although there may have been duplication of the privy seal: see above, p. 235.
19. *Rot. Parl.*, IV, 344.

20. Of those previously recorded as councillors, more than half the peers and a similar proportion of gentlemen (excluding the lawyers) accompanied the king to France. They include the earls of Oxford, Devon and Shrewsbury, Viscount Welles, the Lords Daubeney and Broke, and Bray, Lovell and Guildford. The figures are likely to be an underestimate in view of the imperfections of the records of the expedition (PRO, E36/285; E36/208, pp.106-18; E101/72/3-6; E30/612) and the limitations of the conciliar evidence. The only notable absentees, apart from Bedford and Dynham, were the earls of Arundel and Derby, and William Stanley; George Stanley, Lord Strange, and James Stanley, warden of Manchester, accompanied Henry.
21. Bayne, *Select Cases*, pp.xlviii-ix, 57; above, pp. 231-33.
22. Bayne, *Select Cases*, pp.32, 38-44.
23. Art. 8.
24. J.A. Guy, 'A conciliar court of audit at work in the last months of the reign of Henry VII', *BIHR*, XLIX (1976), 295.
25. Bayne, *Select Cases*, pp.xliii-v, 53-58; memoranda in the chamber books, PRO, E101/414/6, 16; 415/3 and BL, Add. Ms. 59899; WAM. 16018, 16042 (Richard Guildford asked to play courtier while Bray was with the king).
26. Bodl., Ashmole MS. 1125, f.80b; table of attendance in Bayne *Select Cases*, p. xxxv.
27. Bayne, *Select Cases*, pp.xix-xxii, lists sources and counts 227. Others may be added, including Roger Lupton, Henry Ediall, William Atwater and Hugh Oldham (sworn 1506/7 but a councillor by 1500) and several lawyers (although cf. above pp. 232-34). Bayne has missed Mountjoy (*Vergil*, p.6), but Wingfield may be Edward and it is difficult to reconcile Vergil's councillor with Dudley's reference to 'one Troys' (C.J. Harrison, 'The petition of Edmund Dudley', *EHR*, LXXXVII [1972], 87). On the other hand, Arthur Rich is surely Caesar's mistranscription of Archus Rich, that is, Christopher Urswick, archdeacon of Richmond; George Bolton must be a peer (? Grey of Wilton); John Wallys and John Wells are synonymous; and Richard Chamberlain, Steward and Hodge are phantoms of the index (Stanley, Willoughby de Broke and Hody): cf. Bayne, *Select Cases*, pp.xx-xxi; BL, Lansdowne MS. 160, f.307v.
28. E.g., Thomas Warde is councillor in 1487-88, but merely a trusty servant in 1493, and William Cope, cofferer in 1494-1507, is surely not a councillor; *Foedera*, XII, 337; XIII, 119; PRO, E404/79, 12 March 2 Hen. VII; E404/81, 9 July 8 Hen. VII; Bayne, *Select Cases*, pp.xx-xxi; see also Lander, *Crown and Nobility*, pp.204-5, 211.
29. BL, Cotton, Titus EV, f.421.
30. PRO, unsorted miscellanea; CPR, 1494-1509, p.226.
31. Art. 2, 16-18; M.M. Condon, 'Ruling élites in the reign of Henry VII' in *Patronage, Pedigree and Power in later Medieval England*, ed. Charles Ross (Gloucester, 1979), pp.99, 141.
32. *Great Chron.*, p.320.
33. PRO, E36/285, f.79; Bayne, *Select Cases*, p.31; in 1493 Henry VII remarked on his 'kinde and redy disposicion always to serve our pleaisirs in laying out his money and othrewise. . .', PRO, E404/81, 12 April 8 Hen. VII.
34. Art. 7; not only Shaw and Rede, but see foreign ambassadors; or Lord Slane in 1506 discussing Irish rebellion, Bayne, *Select Cases*, pp. 46, 57; above, p. 233.
35. Art. 7. See also Bayne, *Select Cases*, pp.xlviii-ix; Lander, *Crown and Nobility*, p.215; J.F. Baldwin, *The King's Council in England during the Middle Ages* (Oxford, 1913), pp.353-54.
36. Unusually the presence included Arthur, prince of Wales, who had made a state entry into London; the peers included Buckingham and Northumberland, both recently come of age; Abergavenny, Hastings and Grey of Wilton had previously attended council meetings, presumably unsworn. Bayne, *Select Cases*, pp.xlix, 30; *Great Chron.*, pp.288-89; CPR, 1494-1509, pp.131, 138.
37. *The Ancient State, Authoritie and Proceedings of the Court of Requests* by Sir Julius Caesar, ed. L.M. Hill (Cambridge, 1975), p.205; PRO, C193/1, f.87v; HEH MS.E1.2652, f.3v; BL, Hargrave MS. 216, f.101v-103v, 149v; Baldwin, *King's Council*, pp.353-54.
38. PRO, REQ 1/1, f.140, transcribed in Baldwin, *King's Council*, p.444.

39. Sheen, Greenwich, Eltham, Windsor and London. Comments on the king's itinerary are based on the author's own unpublished work.
40. PRO, REQ 1/1, f.1, printed *Ancient State*, pp.39–40 – but *nono* is an amendment from *viii*. This may be a simple error, but Dymmock is an insertion and in neither year was Bray continually with the king. In 1493 the bishop of Exeter and the chief justice were certainly with Henry, and Kingsmill was paid for his attendance, PRO E405/78, m.62; REQ 2/4/361; E404/81, 13 July 8 Hen. VII. The sheet itself may have been an endpaper used for jottings.
41. PRO, REQ 1/1, f.77, 79; REQ 2/4/361; E405/78, m.60d–62; DL29/464/7573; HMC, 55 *Various*, II, 29–34.
42. PRO, REQ 1/1, f.81–91.
43. HEH MS.E1. 2652, f.3v; Guy, 'Court of Audit', p. 291.
44. E.W. Ives, 'The common lawyer in pre-Reformation England', *TRHS*, 5th ser., XVIII (1968), 153–55; R. Somerville, 'Henry VII's Council Learned in the Law', *EHR*, LIV (1939), 427–42; Condon, 'Ruling Elites', pp.131–34.
45. Art. 14.
46. Bayne, *Select Cases*, pp.xxxi–ii, cvi–viii, 16, 30, 32, 56.
47. *Ibid.*, p.32; DKR, III (1843), App. II, pp.216–18; for the oath, PRO, C193/1, f.78v–79, 82.
48. Above pp. 238–39.
49. I am indebted to Dr. A.S. Bevan for helpful discussions on the lawyers; see also PRO, STAC 10/8, m.346, a signet letter to Morton ordering him to associate with 'the lordes of oure counsell and the Jugges and other of oure lerned counsell' for the settlement of a dispute.
50. On Dudley, PRO, E101/413/2/3, p.91; E.W. Ives, *The Common Lawyers of Pre-Reformation England* (Cambridge, 1983), pp.79–80; J.H. Baker, *The Order of Serjeants at Law* (Selden Soc., 1984), pp.34, 265–66; for Mordaunt, PRO, unsorted miscellanea: he was to be paid 200 marks *per annum*, but without the fees of the seal.
51. PRO, E404/81, 13 July 8 Hen. VII; E101/248/18, printed in A. Conway, *Henry VII's Relations with Scotland and Ireland* (Cambridge, 1932), pp.226–30.
52. PRO, C82/306, 25 October; Guy, 'Court of Audit', pp.289–92.
53. Ives, *TRHS*, 5th series, XVIII (1968), 154–56; *idem*, *Common Lawyers*, pp.229–31.
54. Guy, *Star Chamber*, pp.5–9, 82 n.26.
55. Art. 8.
56. PRO, E404/79, 10 July 1 Hen. VII, printed in W. Campbell, *Materials for the reign of Henry VII* (2 vols., RS, 1873–77), I, 495, but widely misinterpreted; PRO, C82/8, 25 March; E405/75, m.5–7, esp. 5d.
57. PRO, DL3/4, N1d.
58. William Hudson, 'A treatise on the court of Star Chamber', *Collectanea Juridica*, ed. F. Hargrave (2 vols., 1792), II, 37–42; PRO, E404/81, 28 November 7 Hen. VII (Baldiswell); Bayne, *Select Cases*, pp.xx, lxxviii–lxxx; *Foedera*, XIII, 105 (Rydon).
59. PRO, LC 2/1, f.70v, 141v; *L and P.*, Hen. VIII, I, pt. i, p.250; PRO, REQ 1/3, f.13–14 (William Purde, who noted also a fee due to himself in consequence; other examples are scattered in the books).
60. PRO, C82/301, 6 July (not enrolled); C255/8/5, no.77 (at Richmond); LC 2/1, f.126; the endorsements on STAC 1/2/70, 73, 90; STAC 1/2/26 and STAC 2/34/58 are not in Rydon's hand, and Rydon was in the Scottish marches at the time, E36/214, p.148.
61. Guy, *Star Chamber*, pp.15–17; *Ancient State*, pp.63–87; PRO, REQ 1/3, *passim*.
62. Carole Rawcliffe, 'Baronial councils in the later middle ages', in *Patronage, Pedigree and Power*, pp.90–94, 105–6; *idem*, 'The great lord as peacekeeper: arbitration by English noblemen and their councils in the later middle ages', in *Law and Social Change in English History*, ed. J.A. Guy and H.G. Beale (1984), pp.37–39.
63. CPR, 1485–94, pp.407–8.
64. PRO, C82/99–101.
65. PRO, C82/99, 23, 24 October; C82/100, 12 November, HEH MS.E1. 2652, f.12; CPR, 1485–94, p.407; PRO, C76/176. The files include all but two of the substantive grants, but

- not the pardons of outlawry, which in effect ran of course on the fulfilment of certain conditions: PRO, C88/185.
66. Art. 11; Guy, *Star Chamber*, p.5; Bayne, *Select Cases* (quoting the Paston letters), p.lxxvii, confirmed *ibid.*, p.55 (1494); and on 27 November the chancellor and council dined with the king, the only time such an occasion is noted in the cofferers' accounts, PRO, E101/414/3, p.18; similarly, in Hilary term 1498 the king's affairs interrupted judicial business, PRO, unsorted Catesby MSS.
 67. E.g., PRO, REQ 2/4/384; REQ 2/9/70.
 68. PRO, C244/139-55; C255/8/5, 8/8, 8/10. There are large gaps in the series.
 69. PRO, C244/147/105; 153/30; 155/85; C255/8/5/65; 8/10 (*Star Chamber*, all post-1500); C255 8/5/82, 91-92 (council attendant); 8/5/93 (Bray and other councillors) – but this and C255/8/5/95 (council attendant) resulted in an appearance before the council learned. Other bonds for appearance *ubicunque* are basically bonds without day for allegiance.
 70. PRO, REQ 1/1, f.100v; similarly REQ 2/12/29.
 71. Art. 15; BL, Lansdowne MS. 639, f.14v; Baldwin, *King's Council*, pp.435, 444, 447; cf. PRO, REQ 2/11/1, cited in Rawcliffe, 'The great lord as peacekeeper', p.53; for Hudson's certification procedure, applied to a licence for alms, PRO, C82/332, 14 December (1501).
 72. For arbitration, see Rawcliffe, 'The great lord as peacekeeper', *passim*; J.A. Guy, *The Cardinal's Court* (Hassocks, 1977), pp.47-49, 56-57, 97-103.
 73. Bayne, *Select Cases*; Guy, *Star Chamber*; *idem*, *Cardinal's Court*.
 74. PRO, unsorted Catesby MSS., 'counsell of . . . requestes' (1498); REQ 2/10/32, 'counsell . . . of . . . court of requestes' (1503); DL5/2, f.69, 'kinges counsel of requestes' (1504); REQ 2/2/135, 'lordys of the Request' (1505); DL5/4, f.106, 'Counsel of the request' (1507); REQ 2/11/1, from Abergavenny, 'Dean of the Kinges most honourable chapell and othre of his moste discrete counsell of requestis' (1508).
 75. E.g., PRO, REQ 2/5/124; 2/84; 10/73; 2/95 (household); 13/10; 3/289; 2/88 (allegations of poverty).
 76. PRO, REQ 1/2-3, *passim*, set against the king's itinerary.
 77. E.g., PRO, REQ 1/1, *passim*; REQ 1/2, f.60; 3, f.76, 161, 168, 215; REQ 2/4/384; C244/146/7, 53.
 78. Guy, *Star Chamber*, pp.5-8.
 79. Art. 3, 12.
 80. Art. 3, 6, 8, 13.
 81. Guy, *Star Chamber*, pp. 5-6.
 82. PRO, C82/92, 26 April: patent 10 May (not enrolled); Mill's translation is cited in Bayne, *Select Cases*, p.lxxix; PRO, E404/81, 17 February 7 Hen. VII. Baldisswell, like Rydon, was active before the date of his formal appointment, but has left little trace in the records; but see, for example, PRO, E28/93, no.84(ii).
 83. Above, p. 242.
 84. E.g., PRO, REQ 1/1, f.39v, 85v, 89, 99.
 85. Art. 9; Baldwin, *King's Council*, pp.172-74, 388-89.
 86. PRO, C81/1547/13. This petition has some peculiarities and alleges that Edward IV had already acceded to the plea for mercy, at the intercession of the prince.
 87. PRO, C82/315, 18 July 1508. The signatories were William Warham, chancellor; Richard Fox, keeper of the privy seal; Charles Somerset, Lord Herbert; Geoffrey Blithe, bishop of Coventry and Lichfield; Thomas Fineux, chief justice; Robert Rede, chief justice; the puisne justices Tremayle, Fisher, Brudenell, Kingsmill and Butler; and Edward Poynings, the erstwhile deputy. For the statute, see Conway, *Scotland and Ireland*, pp.120-21.
 88. Lander, *Crown and Nobility*, pp.171-90; Condon, 'Ruling Elites', pp.115-34.
 89. PRO, C142/22/76; C244/156/97; C244/147/105.
 90. PRO, C82/335-351; E101/417/7; G.R. Elton, 'Why the history of the early-Tudor council remains unwritten', *Studies in Tudor and Stuart Politics and Government* (3 vols., Cambridge, 1974-83), I, 318-19, 327-28; Guy, *Cardinal's Court*, pp.23-24.
 91. E.g., PRO, REQ 2/6/180; REQ 2/1/62; Guy, *Star Chamber*, p.25.

92. PRO, DL1/1-2; DL3/1-6, *passim*.
93. Griffiths, *Henry VI*, pp.38-46.
94. Art. 11; PPC, IV, 62; CPR, 1485-94, p.407.
95. Brown, 'King's councillors', p.99; Lander, *Crown and Nobility*, p.204; Condon, 'Ruling Elites', p.118.
96. PRO, REQ 1/1, f.82; E101/415/3, f.290; Guy, *Cardinal's Court*, pp.13, 147.
97. Bayne, *Select Cases*, pp.xxxvii-xl, 52; PRO, REQ 1/3, f.50v; REQ 2/2/80, 99, 154, 158.
98. Art. 6, 9, 13.
99. CSP, *Spain*, I, p.223; similarly *ibid*, 1st supplement, p.5.
100. Bayne, *Select Cases*, pp. 30-31; above, p. 231.
101. Art. 4; PRO, REQ 1/1-3, *passim*; Guy, *Star Chamber*, pp.51-65; examples of remission are in HEH MS.E1. 2652, f.11; *Ancient State*, pp.46-48, 57; DL5/2, f.109v; REQ 2/5/117 (remission to a spiritual court); stay of process, for example, see *Ancient State*, pp.71-72; HEH MS.E1. 2652, f.2v.
102. Thus, for example, *The Tree of Commonwealth*, by Edmund Dudley, ed. D.M. Brodie (Cambridge, 1948), esp. pp.31-37; Baker, *Serjeants at Law*, pp.288-95; PRO, REQ 2/1/33, cited in Bayne, *Select Cases*, p.xxxiii; PRO, STAC 2/35/40, quoting the tag *Execucio legis est preservacio Regis*; STAC 10/8, m.346; E404/81, 13 April 7 Hen. VII.
103. Art. 2, 5; Bayne, *Select Cases*, pp.14, 17, 30; PRO, REQ 2/6/55; REQ 2/8/181; HMC 55, *Various*, II, 26-56, esp. pp.36-38.
104. Art. 5, 16-18; Ives, *Common Lawyer*, p.243; BL, Royal MS. 14 B XXIV, although the payment to the jury, made by the advice of the council, may have been made after the jury had indicted Sir Thomas Green.
105. Condon, 'Ruling Elites', p. 118; PRO, STAC 10/4/1; 4/7.
106. Hudson, 'Star Chamber', p.63. Hussey's conduct as sheriff had been investigated by Henry VII: PRO, SC1/51, no.179.
107. CCR, 1485-1500, no.919; PRO, CP40/968, *rot. cart.* 1d; 969, *rot. cart.* 1d-3d; CSP, *Milan*, I, 335; Lander, *Crown and Nobility*, pp.216-18.
108. Bayne, *Select Cases*, p.30; PRO, C244/146/26.
109. *Ancient State*, p.205; cf. PRO, C193/1, f.87v.
110. PRO, E30/612, printed, with a severely truncated and bowdlerized list of signatories, in *Foedera*, XII, 490-94. The signatures are badly galled and sometimes illegible, so it is difficult to be precise about numbers.
111. PRO, E36/208, esp. pp.72-82, 147-48; E36/285 (Cope's accounts, showing receipts of over £80,000 and an expenditure nearly as great); E211/460; CSP, *Spain*, I, 157; C82/92, 4 April, a transparent subterfuge by which Breton transport ships were to come to England in mercantile guise; *Vergil*, pp.51-55.
112. *Ibid.*, pp.55-57; PRO, E404/81, *passim*.
113. Griffiths, 'Protectorate of the duke of York', pp.74-76, 79-81; *idem*, *Henry VI*, pp.28-41, 275-84.
114. Elton, 'Tudor Council', p.338; Hudson, 'Star Chamber', p.31; BL, Hargrave MS. 216, f.101v-3v, 115-19v.